



New York State
Department of Economic Development
Division of Minority and Women's
Business Development

In the matter of the appeal of

Modern Mechanical Fab, Inc.

FINAL ORDER 23-08

From a denial of certification as a Woman-owned Business Enterprise pursuant to Executive Law Article 15-A.

This order arises from an administrative appeal brought on behalf of Modern Mechanical Fab, Inc. (“MMFI” or “Appellant”) pursuant to section 144.2 of title 5 of the New York Codes, Rules and Regulations.¹ Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated November 21, 2019 to deny MMFI’s February 11, 2016 certification application as a Woman-owned Business Enterprise (“WBE”).

Applicant timely submitted a notice of appeal, dated December 4, 2019, requesting to appeal via written submission. The Division sent a notice to proceed by written appeal to Applicant on January 16, 2020. Applicant submitted a written appeal by letter, dated January 27, 2020. The Division submitted its response to the appeal, dated November 21, 2022. Administrative Law Judge (“ALJ”) David A. Murad presided over the appeal.

The issues on appeal were whether Appellant sufficiently demonstrated that the woman owner relied upon for certification (1) makes a capital contribution to the business enterprise in proportion to her equity interest demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1); (2) shares in the risks and profits in proportion to her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2); (3) makes decisions pertaining to the operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1); and (4) demonstrates adequate managerial experience or technical

¹ The Division’s November 21, 2019 denial determination pre-date the December 2, 2020 amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the former regulations are referenced throughout this final order.

competence, and working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR §§ 144.2(b)(1)(i) and 144.2(b)(1)(ii).

On April 12, 2023, the Division received a Recommended Order from Judge Murad that recommended affirmation of the Division's denial of the application to certify Appellant as an WBE on the ground set forth in the Division's November 21, 2019 denial letter.

After considering the appeal record, I accept the recommendation of the Administrative Law Judge as it pertains to the facts of this case. Incorporation by reference is hereby made with respect to the findings and conclusions of the Recommended Order.

It is hereby **ORDERED** that the decision to deny certification, dated November 21, 2019, is affirmed. Accordingly, Modern Mechanical Fab, Inc. will not be listed on the Division's directory for Minority and Women-owned Business Enterprises.

September 8, 2023



Jason M. Clark
Executive Vice President and Executive Director
Division of Minority and Women's Business Development